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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

UNITED STATES OF AMERICA

v.

JUAN FRANCISCO ORTIZ

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**CIVIL NO. L-05-cv-50
CRIMINAL NO. 03-cr-1963-01**

ORDER OF DISMISSAL

Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 1]. Petitioner makes two specific allegations of ineffective assistance of counsel. First, he argues that his attorney failed to file an appeal as allegedly requested by petitioner. Second, petitioner faults his attorney for failing to proffer an argument under *Blakely v. Washington*, 542 U.S. 296 (2004), despite petitioner's alleged request.

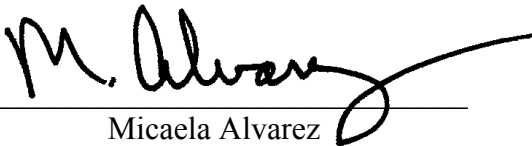
Petitioner filed a Notice of Non-Appeal on September 16, 2004 in which he avers that he had "discussed the case with [his] attorney and [has] decided not to pursue an appeal." [Cr. Doc. No. 46]. The Notice of Non-Appeal, in English and Spanish, is signed by the defendant. Despite documented evidence to the contrary, petitioner now claims to have harbored a desire to appeal. Without more, petitioner's bald assertions cannot overcome the clearly documented evidence which suggests that plaintiff knowingly and willingly relinquished his right to appeal.

In addition, petitioner's invocation of *Blakely v. Washington*, 542 U.S. 296 (2004) is unavailing. *Blakely* dealt with the sentencing guidelines in the state of Washington and does not apply to the federal sentencing guidelines.

The motion for relief [Doc. No. 1] is **DENIED**, and this case is **DISMISSED**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED.

DONE this 15th day of August, 2005, at Laredo, TX.



Micaela Alvarez
UNITED STATES DISTRICT JUDGE